

therein, except that "fishy smell" has been omitted, and "smell of animal meat" has been changed to --smell of non-fish animal meat-- so that it is clear that fishy smell is excluded. In addition, Claims 9 and 13 have been amended to recite that the orally ingestible product is --lacking a bitter flavor--.

The exclusion of a bitter flavor is supported by the disclosure of bitterness at, for example, page 5, line 14 of the specification, and In re Johnson, 558 F.2d 1008, 194 USPQ 187 (CCPA 1977) (holding that a claim to a genus with a recital of a negative proviso that did not appear in the specification complied with the *description* requirement.)

No new matter is believed to have been added by the above amendment. With entry thereof, Claims 9 and 13 will be pending in the application.

REMARKS

The rejections of Claims 9-16 under 35 U.S.C. § 103(a) as unpatentable over WO98/23166 (Gudas et al), GB1299135 (Cumberland Packing), EP 0582396 (Catania et al), English language abstract of JP 61-120690 (Yusuke), and WO88/06004 (Turback) are respectfully traversed. Gudas et al, Cumberland Packing, and Catania et al are each drawn to inhibiting or reducing bitterness, which is excluded from the claims. Yusuke is drawn to deodorizing water, although particular odors are not disclosed. Nevertheless, water is not an ingestible product within the terms of the claims. Turback is drawn to a composition for improving the organoleptic properties of seafood. Turback's composition comprises a salt, an organic acid, which may be gluconic acid, a calcium salt which may be calcium gluconate, a sweetening agent, and a flavoring/masking agent. Turback discloses that the organic acid may act as, *inter alia*, a flavoring agent and a deodorizing agent (paragraph bridging pages 3 and 4). However, fishy smell is now excluded by the claims.

In the Office Action, the Examiner finds that the claims do not exclude ingestibles that are bitter. In reply, it is clear that the present claims do. It would not have been obvious to add a nontoxic gluconic acid to any of the ingestible products to mask any of the odors or flavors, as claimed, in view of the applied prior art.

For all the above reasons, it is respectfully requested that these rejections be withdrawn.

The Examiner is reminded that a Notice of Acceptance indicates that both the International Search Report and copies of the references cited therein have been received by PTO. In addition, Applicants have filed an IDS including these references (as well as a reference discussed in the specification). Thus, it was improper for the Examiner not to initial all the references listed on the PTO Form 1449, but to cross out most of them.

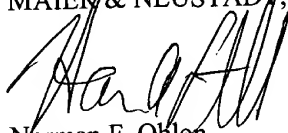
During a previous interview, the Examiner acknowledged the proper approach, but indicated that the crossed-out references were not in the file. It was assumed that in the interim, these references had been found and/or the Examiner had ordered them. On August 7, 2002, Applicants submitted copies of the appropriate prior art in a Resubmission of Prior Art. As argued therein, "[t]he Examiner is respectfully requested to consider this prior art and initial all entries on the PTO Form 1449. **In addition, since this prior art has not, but should have, been previously considered, it is requested that the finality of the Office Action dated July 3, 2002 be withdrawn.**" (Emphasis now added.)

All of the presently-pending claims in this application are now believed to be in

immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Respectfully submitted,

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IN THE CLAIMS

--9. (Amended) An orally ingestible product lacking a bitter flavor comprising a material having at least one of an odor and a flavor other than a bitter flavor, and an agent for masking said at least one of an odor and a flavor other than a bitter flavor comprising a nontoxic salt of gluconic acid, wherein the flavor is selected from the group consisting of astringency, pungency, sourness and flavor of powdered milk, and wherein the odor is selected from the group consisting of soybean smell, vegetable smell, smell of garlic, smell of old rice, smell of konjak jelly, smell of vitamin, smell of retort-pouched product, smell of non-fish animal meat and smell of powdered milk, and wherein the orally ingestible product is selected from the group consisting of grated horseradish, Kimchi, grated Japanese radish, vinegar, pickled Ume, lemon juice, soya milk, foods containing soybean protein, vegetable juice, tomato juice, grated garlic, old rice, konjak jelly, foods containing vitamin B group, retort-pouched foods, mutton and foods containing powdered skim milk.

13. (Amended) A method for masking at least one of an odor and a flavor other than a bitter flavor, of a material lacking a bitter flavor and having said at least one of an odor and a flavor other than a bitter flavor, in an orally ingestible product, comprising adding a nontoxic salt of gluconic acid to said product, wherein the flavor is selected from the group consisting of astringency, pungency, sourness and flavor of powdered milk, and wherein the odor is selected from the group consisting of soybean smell, vegetable smell, smell of garlic,

smell of old rice, smell of konjak jelly, smell of vitamin, smell of retort-pouched product, smell of non-fish animal meat and smell of powdered milk, and wherein the orally ingestible product is selected from the group consisting of grated horseradish, Kimchi, grated Japanese radish, vinegar, pickled Ume, lemon juice, soya milk, foods containing soybean protein, vegetable juice, tomato juice, grated garlic, old rice, konjak jelly, foods containing vitamin B group, retort-pouched foods, mutton and foods containing powdered skim milk.--

Claims 10-12 and 14-16 (Canceled)